

May 13, 1955

Honorable Jack L. Ogg
Yavapai County Attorney
Prescott, Arizona

Re: Opinion 55-84

Dear Jack:

On reviewing the above opinion in connection with the question which relates to the power of a county to lease property without making the same available at public auction, after publication of notice, this office has come to the conclusion that the conclusion in connection with the said question was too broad and should be limited to unimproved real property and not county real property upon which buildings have been erected.

This office does feel that our Supreme Court might well rule that in the case of your fairgrounds, it would not be necessary to publish notice of a proposed lease; however, in view of Section 17-207, ACA, 1939, we feel that it would be much safer in such instances to follow the publication procedure outlined in said section.

For many years, Pima County has entered into similar leases, without publication and notice, and the legality of such leases has never been challenged.

I realize that this does not definitely answer your question; however, all I can say is that your guess is as good as ours, and we, of course, feel that the more conservative approach is the best approach.

With best wishes, we remain,

Cordially yours

ROBERT MORRISON
The Attorney General

W. T. HOLMES
Chief Asst. Attorney General

rem

put Back in file

April 19, 1955
Opinion No. 55-84

REQUESTED BY: Jack L. Ogg, County Attorney,
Yavapai County, Prescott, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Norman E. Green, Assistant Attorney General

QUESTION: 1. Does the County have authority, express or implied, to lease its property?

2. If the County has this power, express or implied, to lease this property, is leasing to the highest bidder after publication and posting required?

3. May the Board of Supervisors grant a lease, the term of which will extend beyond the current term of office of the members of the Board?

CONCLUSION: 1. Yes, the County has such implied authority.

2. No.

3. Yes, if it appears that the contract was made in good faith and in the public interest.

County Boards have no powers other than those conferred to rent or to lease property or franchises owned by the county, unless they are expressly or impliedly authorized to do so, 20 C.J.S. 1002.

Section 17-202, A.C.A., 1939, entitled "Powers", provides in part that county powers can only be exercised by the Board of Supervisors of a county or by agents and officers acting under its authority and authority of law, and they may make such orders for the disposition or use of its property as the interest of its inhabitants requires. From this power over the disposition or use of county property, we find that the county has at least the implied power to lease its property.

As to whether or not, in the leasing of its property, the county is required to offer the lease to the highest bidder, after posting and publication, as is required when the county sells lands, we find no such requirement in the statutes or cases. Since

county supervisors possess only powers expressly conferred by statute or necessarily implied therefrom, as mentioned above, and also found in the case of BOARD OF SUPERVISORS OF APACHE COUNTY, vs. UDALL, 38 Ariz. 497, 1 P 2d 343, under the powers given to the county supervisors under Section 17-202, A.C.A., 1939, they are expressly given the power to make any orders for the disposition or use of its property as the interests of its inhabitants require.

"The board's decision as to the propriety or terms of the lease will not be disturbed, except for fraud, corruption or unfair dealings, but it can not disregard a better offer for the premises." 20 C.J.S. 1002, Section 170, entitled "Renting or leasing" (of county property).

By inference from the above citation and from the fact that the statute allows the disposition or use of county property, based upon the required interests of the county inhabitants, it is felt that consideration should be given to the highest offer made for the leasing of county property, when two or more parties are interested in leasing such property. However, this does not mean that bids should be called for by posting and publication.

Public officers may enter into a contract for the doing of particular and specific acts, the performance of which may extend beyond the term of office of the officers making the contract, provided it appears that the contract was made in good faith and in the public interest. Such contract is not void because it will not be completed during the term of such officers. PIMA COUNTY vs. GROSETTA, 34 Ariz. 530, 97 P2d 538. APACHE COUNTY vs. UDALL, 38 Ariz. 497, 1 P2d 343.

It is, therefore, the opinion of this office that a county, acting through its Board of Supervisors, has authority to lease its property, without the necessity of leasing such to the highest bidder after publication and posting, as is required in the sale of county land, and such a lease will be valid beyond the current term of office of the members entering into the lease, as long as the lease was made in good faith and for the public interest.

ROBERT MORRISON
The Attorney General

Norman E. Green
NORMAN E. GREEN
Assistant Attorney General

llm